Atlanta 3's, and that the breach occurred on refusal to perform. *B. B. Ford & Co.* v. *Lawson* (1909), — Ga. —, 65 S. E. 444.

The court, in construing the meaning of "good cotton," took into consideration the defendant's original offer to sell good cotton graded Atlanta 3's; although no other mention of the quality of the cotton was made in the telegram of acceptance than "good cotton,"—which expression includes Atlanta 1's, 2's, 3's, and 4's. According to §3674 Civil Code 1895 (Ga.) if one party places a certain meaning upon a contract, and that is known to the other party, such meaning governs. A similar construction was placed on contracts in *Slater, Myers & Co.* v. *Demorest Spoke & Handle Co.*, 94 Ga. 687, 21 S. E. 715; *Armistead* v. *McGuire*, 46 Ga. 232. The refusal of the lower court to charge that a breach occurred upon the defendant's refusal to perform, prior to the date set for delivery, was held error; the upper court ruling in accordance with the overwhelming weight of authority (MECHEM, SALES, §1089) following *Hochster* v. *De La Tour*, 2 El. & Bl. 678; *Roehm* v. *Horst*, 178 U. S. 1, 20 Sup. Ct. 780, 44 L. Ed. 953. The courts of but two states hold contra: *Stanford* v. *Magill*, 6 N. Dak. 536, 72 N. W. 938, 38 L. R. A. 760; *King* v. *Waterman*, 55 Neb. 324, 75 N. W. 830.

SUNDAY—SUNDAY BASEBALL NOT A MISDEMEANOR.—Certain clergymen in Detroit prayed for a writ of mandamus to compel the police commissioner to stop Sunday baseball playing, and the supreme court, on certiorari, after stating that the police commissioner was not one of the officers named by Comp. laws 1897, §11,334, to command a dispersal, *held* that playing baseball on Sunday does not amount to a misdemeanor and cannot be prosecuted by indictment, and that a mere assemblage of persons to play and witness such a game on Sunday is not of itself and necessarily a breach of the peace sufficient, without overt acts of violence or disorder, to authorize a summary arrest. *Yerkes, Pros. Atty.* v. *Smith, Police Com'r* (1909), — Mich. —, 122 N. W. 223.

At common law all acts not unlawful per se may be lawfully performed on Sunday. *Eden Musee American Co.* v. *Bingham*, 108 N. Y. Supp. 200. But statutes and ordinances restricting public amusements on that day have been generally adopted. Mr. Justice CAMPBELL, in *Robison* v. *Miner*, 68 Mich. 557, 37 N. W. 25, expressed the reasoning which the principal case seems to follow thus: "No arrest without a warrant can be made except in case of felony or breach of the peace committed in the presence of the arresting officer." "This exception in cases of breaches of the peace has only been allowed by reason of the immediate danger to the safety of the community against crimes of violence" such as assault and riotous conduct. "But there can be no breach of the peace within the meaning of this law that does not embrace some sort of violence as well as dangerous conduct." It is manifest that in Michigan, Sunday baseball does not come within this reasoning. The supreme court of New York, in *Paulding* v. *Lane*, 55 Misc. 37, 104 N. Y. Supp. 1051, held that public baseball playing on Sunday, under §265 of the penal code is a misdemeanor whether an admission fee is charged or not, and the proper officer may and should arrest any and all persons who may be engaged in his presence in playing such game. But the playing of baseball on Sunday by

three men without making any noise on private grounds was held not to be within the statutory prohibition. *People* v. *Dennin,* 35 Hun 327; s. c. 3 N. Y. Crim. 127. The playing of baseball is not prohibited under a statute prohibiting horse racing, cock fighting or playing at cards or games of any kind on Sunday, the statute being held to apply to games that have a demoralizing tendency and not to mere athletic games like baseball. *Ex parte Neet,* 157 Mo. 527, 80 Am. St. Rep. 638. *St. Louis etc. Ass'n* v. *Delano,* 108 Mo. 217, 18 S. W. 1101, affirming same in 37 Mo. App. 284, which was in direct conflict with another case decided by the Mo. Ct. of App. during the same term of court. *State* v. *Williams,* 35 Mo. App. 541. Kansas has a similar statute and the supreme court recently construed it not to include in its prohibition the game of baseball, citing *Ex parte Neet,* supra, and *St. Louis etc. Ass'n* v. *Delano,* supra, *State* v. *Prather,* — Kan. — (1909), 100 Pac. 57. However the legislature of a state may make it criminal to play baseball on Sunday or exhibit any baseball playing on that day where a fee is charged for admittance. *State* v. *Powell,* 58 Ohio St. 324; *State* v. *Hogreiver,* 152 Ind. 652. Playing baseball is "sporting" within the meaning of Cr. Code, §241, which makes it a misdemeanor to engage in sporting on Sunday. *State* v. *O'Rourk,* 35 Neb. 614, 53 N. W. 591, 17 L. R. A. 830.

SUNDAY—SUNDAY BASEBALL MAY BE A NUISANCE.—Six or seven persons residing in a neighborhood where Sunday ball games were held, filed affidavits to show a cause of nuisance. Forty other persons similarly situated swore that the noises were quite inappreciable. *Held,* as the complainants were not shown to be morbidly sensitive, and as there was an absence of proof that their statements were untruthful, a cause of nuisance had been shown and a preliminary injunction should issue. *McMillan et al.* v. *Kuehnle et al.* (1909), — N. J. Eq. —, 73 Atl. 1054.

It is a well settled proposition that noise alone may constitute a nuisance. 21 AM. & ENG. ENCY., Ed. 2, p. 695. The test is its effect upon an average person of ordinary sensibilities. *Lord* v. *DeWitt,* 116 Fed. 713; *McGuire* v. *Bloomingdale,* 33 Misc. Rep. 337, 68 N. Y. Supp, 477; JOYCE, NUISANCE, §183; it must not be fanciful, *Appeal of Ladies' Art Club,* — Pa. —, 13 Atl. 537. For a preliminary injunction the complainant need only make out a "prima facie" case by affidavit, the injury being considered entirely personal. *Cronin* v. *Bloemecke et al.,* 58 N. J. Eq. 313, 43 Atl. 605; *Seastream* v. *New Jersey Ex. Co.,* 67 N. J. Eq. 178, 58 Atl. 532; the fact that the nuisance is disputed will not prevent such preliminary injunction. *Ross* v. *Butler,* 19 N. J. Eq. 294; *Cleveland* v. *Citizens' Gas Light Co.,* 20 N. J. Eq. 201; *Hart* v. *Leonard,* 42 N. J. Eq. 416. The playing of baseball on Sunday is not a nuisance per se. *Alexander* v. *Tebeau,* 24 Ky. Law. Rep. 1305, 71 S. W. 427, nor is such playing, per se, a breach of the peace, *Yerkes* v. *Smith,* — Mich. —, 122 N. W. 223, see preceding note.